Manitoba

Automobile Injury Compensation Appeal Commission

1720 - 330 Portage Avenue
Winnipeg MB R3C 0C4
CANADA

Phone No: (204) 945-4155
Fax No: (204) 948-2402

September 13, 2000

The Honourable Ron Lemieux
Minister of Consumer and Corporate Affairs
Room 314, Legislative Building
Winnipeg MB R3C 0V8

Dear Minister:

In accordance with Section 180(1) of the Manitoba Public Insurance Corporation Act, I have the honour of submitting to you herewith the Annual Report of the Automobile Injury Compensation Appeal Commission for the fiscal year 1999/2000.

Respectfully,

J. F. REEH TAYLOR, Q.C.,
CHIEF COMMISSIONER

JFRT/mf.

Encl.

ANNUAL REPORT FOR THE FISCAL YEAR 1999/2000
OF THE
AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION

General

The Automobile Injury Compensation Appeal Commission ('the Commission') is a specialist tribunal, established to deal with appeals arising with respect to claims under the Personal Injury Protection Plan (PIPP) of Manitoba Public Insurance Corporation ('MPI'), more commonly known as the 'no-fault insurance program.'

The Commission was established under the Manitoba Public Insurance Corporation Act ('the Act'), which, amongst other things, outlines the powers and responsibilities of the Commission regarding the processing of appeals.

1999/2000 was the sixth full year of the operations of the Commission, which, until February 28th, 2000, had a complement of nine persons: three full-time commissioners, two part-time commissioners, a director, an appeals officer, the secretary to the chief commissioner and a secretary-receptionist. Approximately the same number of appeals were filed with the Commission in 1999/2000 as in the previous fiscal year: 164 and 168, respectively. Many of the appeals heard during the 1999/2000 fiscal year relate to injuries sustained in prior years. This is due, in part, to the fact that, when injuries are of a comparatively serious nature and the insurer's initial liability is not disputed, a claimant may be in receipt of income replacement or medical treatment coverage from MPI for an extended period; it is only when MPI decides to terminate benefits that the appeal process is initiated.

The Appeal Process

Prior to filing an appeal with the Commission, claimants who have suffered from a personal injury caused by an automobile accident, and who feel themselves aggrieved by a decision of MPI, must have that decision reviewed by the Corporation's internal review officer. The Act stipulates:

> **'Section 172(1)** A claimant may, within 60 days after receiving notice of a decision under this Part (*i.e. a decision of the adjusting team*) apply in writing to the Corporation for a review of the decision.'

The internal review officer gives his or her decision in writing, with the reasons for that decision. A claimant who is still dissatisfied may then file a Notice of Appeal with the Commission. Rights of appeal are explained to the claimant in writing at each step in the processing of a claim.

> **'Section 174** A claimant may, within 90 days after receiving notice of a review decision by the Corporation or within such further time as the Commission may allow, appeal the review decision to the Commission.'

Claimants who have furnished persuasive reasons for missing the 90-day deadline have been granted extensions by the Commission. The Commission will continue to consider reasonable requests.

Once a Notice of Appeal has been filed with the Commission, the appellant's file is obtained from MPI and a copy of all relevant contents is provided to the appellant. A date is then set for the hearing of that appeal. The Commission makes every effort to hold a hearing with a minimum of delay while, at the same time, attempting to accommodate the appellant and MPI. During the first two years of its operations, the Commission set hearing dates for about one month after receiving MPI's file. However, last minute adjournments were being sought with disconcerting frequency, usually due to the late receipt from one party of updated medical or chiropractic reports which then had to be shared with the other party. The Commission's current practice is, therefore, to set hearing dates only when both parties can confirm that they do not anticipate producing any further medical or other written reports.

Appeals are heard by a panel of three commissioners, who comprise the quorum prescribed by the Act. Hearings are informal with about 90% of appellants acting without legal representation. The rules of evidence followed by the courts are not necessarily adhered to. On occasion, where an appellant lives or works some distance out of Winnipeg, the commissioners have, with the prior approval of the parties, conducted a hearing telephonically, using a 'speaker-phone' in the hearing room to enable complete communication between all interested persons; this procedure is useful in particular when few, if any, of the relevant facts are in dispute and it is therefore unnecessary for the panel to weigh evidence. The telephone conference call has the added virtue of saving the expense of either bringing the appellant in to the city (sometimes from long distances) or having the entire panel travel to the area where the appellant lives. If, in the course of a telephone hearing, it becomes apparent that the Commission needs actually to see one or more witnesses, the matter will be adjourned to the earliest practicable date for that purpose.

> **'Section 182(5)** Evidence may be given before the Commission in any manner that the Commission considers appropriate, and the Commission is not bound by the rules of law respecting evidence applicable to judicial proceedings.'

Appellants and MPI may bring forward new evidence, either written or in the form of oral testimony, to be used at the hearing, in which event they are required to disclose it to the other side in reasonable time prior to the hearing. The commissioners weigh the evidence and the arguments of both the appellant and MPI in arriving at each decision.

After the hearing, the Commission issues its decision which, according to the Act:

> **'Section 184(1)** .... may
> (a) confirm, vary or rescind the review decision of the Corporation; or
> (b) make any decision that the Corporation could have made.'

The Commission's decision is binding, subject only to a right of appeal to the Manitoba Court of Appeal on a point of law or a question of jurisdiction, and then only with prior leave from that

court. Up to March 31, 2000, only two applications for leave to appeal to the court have been successful.

Decisions, accompanied by the reasons for those decisions, are normally sent to the appellant and to MPI in writing within two or three weeks of the hearing, unless the commissioners find it necessary to seek further, independent, expert evidence, in which case that evidence is shared with both parties who are given an opportunity to respond to it before the Commission's decision is finalized.

All of the Commission's reasons for its decisions (other than those that merely adopt the reasons of MPIC's Internal Review Officer) are now available through QuickLaw, which is a Canadian company that maintains an electronic database of decisions rendered by courts and tribunals from across the country and which are available on a commercial basis. This service should be of particular value to legal counsel who appear at the Commission's hearings.

Approximately 38% of appeals heard during the year succeeded in whole or in part.

All of which is respectfully submitted, this 13th day of September, 2000.

J.F.R.Taylor, Q.C.
Chief Commissioner